# The American Institute of International Law

Founded October 12, 1912

Inaugurated December 29, 1915



D s of Nations

Rights

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The national Law



Declaration of the Rights and Duties of Nations

Official Commentary Upon the Rights and Duties of Nations

Constitution and By-Laws

Officers and Members

## Commendation of the American Institute of International Law by Official Assemblies of a Legal, Political and Scientific Nature, Composed of Representatives of All the American Republics.

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The Third Committee of the Commission of American Jurists, which met at Rio de Janeiro to consider the codification of international law, at its meeting of July 16, 1912, adopted a resolution:

> Commending the initiative taken to found an American Institute of International Law, as the Committee considers an institution of this kind of great usefulness to assist in the work of codification that the statesmen of the New World have in view.

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The Governing Board of the Pan American Union, at its meeting held in the City of Washington on December 1, 1915, unanimously adopted the following resolution:

> Whereas the official inauguration of the American Institute of International Law, founded in Washington October 12, 1912, is soon to take place under the auspices of the Second Pan American Scientific Congress, and
>
> Whereas said Institute, consisting of representatives of every one of the American Republics, recommended by the International Law Associations of their respective countries, will result in strengthening, through the active coöperation of jurists and thinkers of the whole continent, the bonds of friendship and union now existing between these Republics, and will contribute to the development of a common sentiment of international justice among them,
>
> The Governing Board of the Pan American Union
>
> *Resolves* to tender to the founders and members of the American Institute of International Law a vote of commendation and encouragement for the foundation of said organization, which represents a step of the highest important in the moral advancement of the continent and in the strengthening of the sentiments of friendship and harmony among the Republics.

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The Second Pan American Scientific Congress, which met at Washington December 27, 1915–January 8, 1916, adopted the following resolution, which is included in its Final Act:

> The Second Pan American Scientific Congress extends to the American Institute of International Law a cordial welcome into the circles of scientific organizations of Pan America, and records a sincere wish for its successful career and the achievement of the highest aims of its important labors.

# The American Institute of International Law

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# DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS

## adopted by the American Institute of International Law at its first session in the City of Washington, January 6, 1916

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WHEREAS the municipal law of civilized nations recognizes and protects the right to life, the right to liberty, the right to the pursuit of happiness, as added by the Declaration of Independence of the United States of America, the right to legal equality, the right to property, and the right to the enjoyment of the aforesaid rights; and

WHEREAS these fundamental rights, thus universally recognized, create a duty on the part of the peoples of all nations to observe them; and

WHEREAS, according to the political philosophy of the Declaration of Independence of the United States, and the universal practice of the American Republics, nations or governments are regarded as created by the people, deriving their just powers from the consent of the governed, and are instituted among men to promote their safety and happiness and to secure to the people the enjoyment of their fundamental rights; and

WHEREAS the nation is a moral or juristic person, the creature of law, and subordinated to law as is the natural person in political society; and

WHEREAS we deem that these fundamental rights can be stated in terms of international law and applied to the relations of the members of the society of nations, one with another, just as they have been applied in the relations of the citizens or subjects of the states forming the Society of Nations; and

WHEREAS these fundamental rights of national jurisprudence, namely, the right to life, the right to liberty, the right to the pursuit of happiness, the right to equality before the law, the right to property, and the right to the observance thereof are, when stated in terms of international law, the right of the nation to exist and to protect and to conserve its existence; the right of independence and the freedom to develop itself without interference or control from other nations; the right of equality in law and before law; the right to territory within defined boundaries and to exclusive jurisdiction therein; and the right to the observance of these fundamental rights; and

WHEREAS the rights and the duties of nations are, by virtue of membership in the society thereof, to be exercised and performed in accordance with the exigencies of their mutual Interdependence expressed in the preamble to the Convention for the Pacific Settlement of International Disputes of the First and Second Hague Peace Conferences, recognizing the solidarity which unites the members of the society of civilized nations;

THEREFORE, THE AMERICAN INSTITUTE OF INTERNATIONAL LAW, at its first session, held in the City of Washington, in the United States of America, on the sixth day of January, 1916, adopts the following six articles, together with the commentary thereon, to be known as its

**Declaration of the Rights and Duties of Nations.**

I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.

II. Every nation has the right to independence in the sense that, it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

## Official Commentary upon the Declaration of the Rights and Duties of Nations, adopted January 6, 1916.

I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.

This right is to be understood in the sense in which the right to life is understood in national law, according to which it is unlawful for a human being to take human life, unless it be necessary so to do in self-defense against an unlawful attack threatening the life of the party unlawfully attacked.

In the Chinese Exclusion Case (reported in 130 United States Reports, pp. 581, 606), decided by the Supreme Court of the United States in 1888, Mr. Justice Field said for the Court:

> To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character or from vast hordes of its people crowding in upon us. The government, possessing the powers which are to be exercised for protection and security, is clothed with authority to determine the occasion on which the powers shall be called forth; and its determination, so far as the subjects affected are concerned, are necessarily conclusive upon all its departments and officers.

The right of a state to exist and to protect and to conserve its existence is to be understood in the sense in which the right of an individual to his life was defined, interpreted and applied in terms applicable alike to nations and individuals

in the well known English case of *Regina vs. Dudley* (reported in 15 Cox's Criminal Cases, p. 624; 14 Queen's Bench Division, p. 273), decided by the Queen's Bench Division of the High Court of Justice in 1884, to the effect that it was unlawful for shipwrecked sailors to take the life of one of their number, in order to preserve their own lives, because it was unlawful according to the common law of England for an English subject to take human life, unless to defend himself against an unlawful attack of the assailant threatening the life of the party unlawfully attacked.

The right of a State to exist and to protect and to conserve its existence, as laid down by the Supreme Court of the United States, is recognized not merely in the United States but in Latin America, as appears from the views of the well-known publicists, Messrs. Bello and Calvo, who may be considered representative of Latin American thought and practice.

Thus Bello, writing in 1832, said:

> There is no doubt that every nation has the right of self-preservation and is entitled to take protective measures against any danger whatsoever; but this danger must be great, manifest and imminent, in order to make it lawful for us to exact by force that another nation alter its institutions for our benefit. (Andrés Bello, *Principios de Derecho de Jentes,* part 1, chap. 1, VII.)

And Calvo, half a century later, said:

> One of the essential rights inherent in the sovereignty and the independence of States is that of self-preservation. This right is the first of all absolute or permanent rights and is the fundamental basis of a great number of accessory, secondary, or occasional rights. We may say that it constitutes the supreme law of nations, as well as the most imperative duty of citizens, and a society that fails to repel aggression from without neglects its moral duties toward its members and fails to live up to the very purpose of its institution. (Carlos Calvo, *Le Droit International Théorique et Pratique,* 5th ed., Vol. 1, § 208.)

II. Every nation has the right to independence in the sense that, it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.

III. Every nation is in law and before law the equal of every other state composing the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

The right to independence and its necessary corollary, equality, is to be understood in the sense in which it was defined in the following passage quoted from the decision of the great English admiralty judge, Sir William Scott, later Lord Stowell, in the case of *The Louis* (reported in 2 Dodson's Reports, pp. 210, 243-44), decided in 1817:

> Two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all distinct states. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbor; and any advantage seized upon that ground is mere usurpation. This is the great foundation of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preserve inviolate. The second is, that all nations being equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation. In places where no local authority exists, where the subjects of all states meet upon a footing of entire equality and independence, no one state, or any of its subjects, has a right to assume or exercise authority over the subjects of another.

The right of equality is also to be understood in the sense in which it was stated and illustrated by John Marshall, Chief Justice of the Supreme Court of the United States, who said,

in deciding the case of *The Antelope,* in 1825 (reported in 10 Wheaton's Reports, pp. 66, 122):

> In this commerce thus sanctioned by universal assent, every nation had an equal right to engage. How is this right to be lost? Each may renounce it for its own people; but can this renunciation affect others?
>
> No principle of general law is more universally acknowledged, than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality, that no one can rightfully impose a rule on another. Each legislates for itself, but its legislation can operate on itself alone. A right, then, which is vested in all, by the consent of all, can be divested only by consent; and this [slave] trade, in which all have participated, must remain lawful to those who can not be induced to relinquish it. As no nation can prescribe a rule for others, none can make a law of nations; and this traffic remains lawful to those whose governments have not forbidden it.

The right of equality is further to be understood in the sense in which it was expressed and illustrated by Mr. Elihu Root, in the following passage from the address which he delivered, when Secretary of State of the United States, and in the presence of the official delegates of the American Republics accredited to the Third Pan-American Conference held at Rio de Janeiro on July 31, 1906:

> We wish for no victories but those of peace; for no territory except our own; for no sovereignty except the sovereignty over ourselves. We deem the independence and equal rights of the smallest and weakest member of the family of nations entitled to as much respect as those of the greatest empire, and we deem the observance of that respect the chief guaranty of the weak against the oppression of the strong. We neither claim nor desire any rights, or privileges, or powers that we do not freely concede to every American Republic. We wish to increase our prosperity, to expand our trade, to grow in wealth, in wisdom, and in spirit, but our conception of

> the true way to accomplish this is not to pull down others and profit by their ruin, but to help all friends to a common prosperity and a common growth, that we may all become greater and stronger together.

It would seem that the measured judgments of Lord Stowell and of Chief Justice Marshall, not to speak of Mr. Root's opinion, given as Secretary of State, are sufficient to establish a principle of international law, and that it is unnecessary to cite other authorities, if the ones already quoted fail to produce conviction. In order to show, however, that independence and equality are the law of the American Continent, the authority of the two great Latin-American publicists may be again invoked.

Thus, Bello says:

> From the independence and the sovereignty of nations it follows that no one nation is permitted to dictate to any other nation the form of government, of religion, or of administration that it must adopt, or to hold it accountable for the relations between its citizens or those between the government and its subjects. (Bello, *Principios de Derecho de Jentes,* part 1, chap. 1, VII.)

> All men being equal, the groups of men composing universal society are equal. The weakest republic enjoys the same rights and is subject to the same duties as the mightiest empire. (Bello, *Principios de Derecho de Jentes,* part 1, chap. 1, II.)

And to the same effect, but more at length, Calvo says:

> States possess, by virtue of the law of their organization and of their sovereignty, their own exclusive and particular sphere of action. In this respect, they depend upon no one and are bound to provide for the maintenance of those rights and for the observance of those duties alone which are the fundamental and necessary basis of every free society. Absolute sovereignty necessarily implies complete independence. Hence States, in so far as they are moral persons, have a fundamental right: the right of freely carrying out their destinies; and

a duty that is no less imperative: the duty of recognizing and of respecting the sovereign rights and the absolute independence of other States. (Calvo, *Le Droit International Théorique et Pratique,* 5th ed., Vol. I, § 107.)

The equality of sovereign States is a generally recognized principle of public law. It has the twofold consequence of giving all States the same rights and of imposing upon them the same mutual duties. The relative size of their territories cannot justify, in this regard, the slightest difference or the slightest distinction between nations considered as moral persons, and, from the point of view of international law, as well as from that of equity, what is lawful or unjust for one State is likewise lawful or unjust for all others. "Nothing can be done to a small or weak nation," said Mr. Sumner in the United States Senate on March 23, 1871, "that would not be done to a large or powerful nation, or that we would not allow to be done to ourselves." (Calvo, *Le Droit International Théorique et Pratique,* 5th ed., Vol. I, § 210.)

IV. **Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.**

This right is to be understood in the sense in which it was stated by Chief Justice Marshall in the following passage of his judgment in the case of the schooner *Exchange* (reported in 7 Cranch's Reports, pp. 116, 136-7), decided by the Supreme Court of the United States in the year 1812:

The jurisdiction of the nation, within its own territory, is necessarily exclusive and absolute; it is susceptible of no limitation, not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty, to the extent of the restriction, and an investment of that sovereignty, to the same extent, in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation, within its own territories, must

> be traced up to the consent of the nation itself. They can flow from no other legitimate source.
>
> This consent may be either express or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction; but, if understood, not less obligatory. The world being composed of distinct sovereignties, possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates and its wants require, all sovereignties have consented to a relaxation, in practice, in cases under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which sovereignty confers. This consent may, in some instances, be tested by common usage, and by common opinion, growing out of that usage. A nation would justly be considered as violating its faith, although that faith might not be expressly plighted, which should suddenly and without previous notice, exercise its territorial powers in a manner not consonant to the usages and received obligations of the civilized world. * * * *
>
> This perfect equality and absolute independence of sovereigns, and this common interest impelling them to mutual intercourse, and an interchange of good offices with each other, have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction, which has been stated to be the attribute of every nation.

In view of the fulness of Chief Justice Marshall's exposition of this right and its consequences, and in view also of the acceptance of *The Exchange* as an authority in every civilized country, both as to the right and its limitation, it does not seem necessary to quote statements of Latin-American publicists, in order to sustain what may be called the obvious, and which is deeply imbedded in the legislation of the American Republics.

In lieu of many illustrations that might be drawn from the civil codes of the Latin-American States, one will suffice, namely, Article 14 of the civil code of Chile, which declares that,

the law is binding upon all the inhabitants of the Republic, including foreigners.

V. **Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.**

This right is to be understood in the sense in which it was stated in the following passage from the judgment of Chief Justice Waite in the case of *United States vs. Arjona* (reported in 120 United States Reports, pp. 479, 487), decided by the Supreme Court of the United States in 1886, holding that as each nation had by international law the exclusive right to fix its standard of money, it was the duty of the United States as a member of the Society of Nations to protect the money of a foreign country, in this case Colombia, from forgery:

> But if the United States can require this of another, that other may require it of them, because international obligations are of necessity reciprocal in their nature. The right, if it exists at all, is given by the law of nations, and what is law for one is, under the same circumstances, law for the other. A right secured by the law of nations to a nation, or its people, is one the United States as the representatives of this nation are bound to protect.

VI. **International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.**

International law, then called the law of nations, was declared by judges and commentators before the Declaration of Independence of the United States to form an integral part of the common law of England, and by judges and commen-

tators of the United States as adopted at one and the same time with the adoption of the common law of which it formed an integral part. Thus, in the case of *Buvot v. Barbuit* (reported in Cases Tempore Talbot, p. 281), decided by Lord Chancellor Talbot in 1733, that distinguished judge and upright man is reported by Lord Mansfield, who was then the ornament of the bar and was counsel in the case, to have said:

> That the law of nations, in its full extent, was part of the law of England. That the act of Parliament was declaratory, and occasioned by a particular incident. That the law of nations was to be collected from the practice of different nations, and the authority of writers.

In the case of *Triquet v. Bath* (reported in 3 Burrow, p. 1478), decided by the Court of King's Bench in 1764, Lord Chief Justice Mansfield held, quoting the judgment of Lord Talbot in *Buvot v. Barbuit,* that the law of nations was part of the law of England; and three years later, in the leading case of *Heathfield v. Chilton* (reported in 4 Burrow, p. 2015), Lord Chief Justice Mansfield reiterated his opinion, stating that,

> the privileges of public ministers and their retinue depend upon the law of nations; which is part of the common law of England. And the act of Parliament of 7 Ann. c. 12 did not intend to alter, nor can alter the law of nations.

The distinguished commentator, Sir William Blackstone, who had been counsel in both these cases tried before Lord Mansfield, wrote in the first edition of the fourth volume of his Commentaries upon the Laws of England, published in 1769, that:

> The law of nations (wherever any question arises which is properly the object of its jurisdiction) is here adopted in its full extent by the common law, and is held to be a

> part of the law of the land. And those acts of Parliament, which have from time to time been made to enforce this universal law, or to facilitate the execution of its decisions, are not to be considered as introductive of any new rule, but merely as declaratory of the old fundamental constitutions of the Kingdom; without which it must cease to be a part of the civilized world.

In accordance with the views of English judges interpreting and applying the Common Law and in reliance upon the express language of the illustrious English commentator from whom they had learned their law, the Revolutionary statesmen of North America understood and stated that international law was a part of the law of the United States. Thus, Thomas Jefferson, Secretary of State under Washington's Administration, referred in the year 1793 to "the laws of the land, of which the law of nations makes an integral part." (American State Papers, Foreign Relations, Vol. 1, p. 150.) His great opponent, Alexander Hamilton, differing in most respects from Thomas Jefferson, nevertheless concurred in the view that international law was a part of the law of the land, and explained it more elaborately than Mr. Jefferson in the following passage quoted from the essays which Hamilton, under the pseudonym of Camillus, wrote for the Press in 1795 in defense of the Jay Treaty:

> A question may be raised—Does this customary law of nations, as established in Europe, bind the United States? An affirmative answer to this is warranted by conclusive reasons.
>
> 1. The United States, when a member of the British Empire, were, in this capacity, a party to that law, and not having dissented from it, when they became independent, they are to be considered as having continued a party to it.
>
> 2. The common law of England, which was and is in force in each of these States, adopts the law of nations, the positive equally with the natural, as a part of itself.

3. Ever since we have been an independent nation, we have appealed to and acted upon the *modern* law of nations, as understood in Europe—various resolutions of Congress during our Revolution, the correspondence of executive officers, the decisions of our courts of admiralty, all recognize this standard.

4. Executive and legislative acts, and the proceedings of our courts, under the present government, speak a similar language. The President's proclamation of neutrality refers expressly to the *modern* law of nations, which must necessarily be understood as that prevailing in Europe, and acceded to by this country; and the general voice of our nation, together with the very arguments used against the treaty, accord in the same point. It is indubitable, that the customary law of European nations is as a part of the common law, and, by adoption, that of the United States. (Lodge's "Works of Alexander Hamilton," 1885, Vol. V, pp. 89-90.)

A recent decision of the Supreme Court of the United States defines the relation of international law to the law of the land as it was stated by Sir William Blackstone in his Commentaries published before the American Revolution. Thus, in the case of *The Paquete Habana* (reported in 175 United States Reports, pp. 677, 700), decided in 1899, Mr. Justice Gray, delivering the opinion of the Court, said:

> International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who, by years of labor, research, and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be but for trustworthy evidence of what the law really is.

It may be said in summing up the relation of international law to the common law of England and to the municipal law of the United States, that international law is part of the English common law; that as such it passed with the English colonies to America; that when, in consequence of successful rebellion, they were admitted to the society of nations, the new Republic recognized international law as completely as international law recognized the new Republic. Municipal law it was in England; municipal law it remained and is in the United States. Without expressing an opinion upon the vexed question whether it is law in the abstract, the courts, State and Federal, take judicial cognizance of its existence, and in appropriate cases enforce it, so that for the American student or practitioner international is domestic or municipal law.

The constitutions of certain Latin-American States expressly lay down the principle of Anglo-American law that international law is part of the law of the land. Thus, Article 106 of the constitution of the Dominican Republic and Article 125 of the constitution of Venezuela, which admits the principle with certain limitations. The constitution of Colombia of 1863 expressly declared that "The law of nations forms part of the national legislation," and an eminent American publicist specially versed in such matters states that "the authorities of the country are understood, in their treatment of neutrality and other questions, to have acknowledged the continuing force of the principle." In other constitutions of the American Republics the principle is not stated in express terms. It is, however, recognized implicitly or for specific cases; for example, Articles 31, 100, and 101 of the constitution of Argentina; Articles 59, 60, and 61 of the constitution of Brazil; Article 73 of the constitution of Chile; Article 107 of the constitution of Honduras; Article 96 of the constitution of Uruguay, etc., etc.

The laws of Latin-American countries—notably those relating to judicial procedure or to the organization of judicial

authority—recognize, expressly or implicitly, the principle in question. In all the American countries the rules of international law have been treated as in force in their proclamations of neutrality in the great European war.

In future it must be expressly admitted as the basis of the public law of the New World that international law is part of the national legislation of every country. This is not only a principle of justice but one that is necessary to facilitate and to strengthen the friendly relations of all States.

The following impressive language of an eminent citizen of the American continent, Daniel Webster, to be found in an official instruction written when he was Secretary of State of the United States of America, may be quoted as a statement in summary form of the rights and duties of nations, especially of the American Republics:

> Every nation, on being received, at her own request, into the circle of civilized governments, must understand that she not only attains rights of sovereignty and the dignity of national character, but that she binds herself to the strict and faithful observance of all those principles, laws, and usages which have obtained currency among civilized states, and which have for their object the mitigation of the miseries of war.

# CONSTITUTION OF THE AMERICAN INSTITUTE OF INTERNATIONAL LAW

## ARTICLE I. *Name*

An association is founded to be known as the *American Institute of International Law.*

## ARTICLE II. *Object*

The American Institute of International Law is an unofficial scientific association.

It proposes:

1. To give precision to the general principles of international law as they now exist, or to formulate new ones, in conformity with the solidarity which unites the members of the society of civilized nations, in order to strengthen these bonds and, especially, the bonds between the American peoples;

2. To study questions of international law, particularly questions of an American character, and to endeavor to solve them, either in conformity with generally accepted principles, or by extending and developing them, or by creating new principles adapted to the special needs of the American Continent;

3. To discover a method of codifying the general or special principles of international law, and to elaborate projects of codification on matters which lend themselves thereto;

4. To aid in bringing about the triumph of the principles of justice and of humanity which should govern the relations between peoples, considered as nations, through more extensive instruction in international law, particularly in American universities, through lectures and addresses, as well as through publications and all other means;

5. To organize the study of international law along truly scientific and practical lines in a way that meets the needs of modern life, and taking into account the problems of our hemisphere and American doctrines;

6. To contribute, within the limits of its competence and the means at its disposal, toward the maintenance of peace, or toward the observance of the laws of war and the mitigation of the evils thereof;

7. To increase the sentiment of fraternity among the Republics of the American Continent, so as to strengthen friendship and mutual confidence among the citizens of the countries of the New World.

### Article III. *Membership*

The American Institute of International Law is composed of committees or delegates of the national societies of international law established in the different American Republics, which are affiliated therewith and of which it is the permanent representative.

It comprises:

1. Charter members;
2. Titular members;
3. Ex officio members;
4. Corresponding members.

The charter members are those who accepted this designation by signing, in 1912, the draft which has now become the present Constitution.

The titular members, chosen exclusively from among the publicists of the different Republics of the American Continent, are elected by the Institute, in conformity with the next article. No Republic may have more than five such members at one and the same time.

If the secretary general of the national society of international law in any one of the American Republics is not personally a member of the Institute, he becomes of right a member ex officio, that is to say, by virtue of and for the term of his office. Ex officio members have, as such, the same rights as titular members.

Jurists of non-American nationality, who, through their writings or their activity, shall have contributed to the progress of international law, may be elected corresponding members.

Corresponding members are invited to attend all the sessions of the Institute, with the same rights and privileges as American members. They have not, however, the right to vote either on administrative or scientific questions.

They are called upon to give their opinion on questions submitted to the consideration of the Institute, and they are active collaborators thereof.

They are exempt from the entrance fee and annual dues.

No one State can have more than three such members.

### Article IV. *National Societies*

The national societies organized in each American Republic for the study and popularization of international law, whose members are jurists versed in international law, may affiliate with the American Institute. The members of these societies are entitled to attend the sessions of the Institute, but they may not take part in its deliberations nor may they vote.

The affiliated national societies propose duly qualified persons from among their nationals, for election as titular members by the Institute.

The members of the national societies, who are members of the Institute, constitute, in their country, a governing committee of the said society, which committee is the intellectual bond between the national society and the Institute.

The committee communicates, either directly, or through the secretary general of the national society, with the secretary general of the Institute, and sends him all the transactions and projects of the said society or informs him of the progress that has been made upon them.

The secretary general of the Institute transmits these transactions and projects in full, in part, or a synopsis thereof to the different national societies.

### Article V. *Officers*

The officers of the Institute are an honorary president, a president, a secretary general, and a treasurer.

Before the close of each session there is an election of an honorary president and a president, who remain in office until the election of their successors at the following session.

The application of the foregoing second paragraph is provisionally suspended until the Institute shall have decided otherwise.

In the elections individual ballots are cast, and only the members present are permitted to vote. Nevertheless, absent members are allowed to send their votes in writing, in sealed envelopes. Candidates must receive a majority of the votes of the members present, as well as a majority of all the votes validly cast, in order to be elected.

### Article VI. *Executive Council*

An *Executive Council* is the governing body of the Institute.

It meets at Washington, the seat of the Institute.

It is composed of the president, the secretary general, and the treasurer, who are members ex officio, and of two other members elected at the beginning of each session. They are eligible for re-election.

It has the right to increase its membership and itself elects additional members, if it deems it necessary.

### Article VII. *Secretary General*

The secretary general is elected by the Institute for three sessions. He is eligible for re-election.

He has in his charge the drafting of the minutes of each meeting, all the publications of the Institute, its routine work, its correspondence, and the execution of its decisions, unless the Institute provides otherwise. He is keeper of its seal and

of its archives. At the beginning of each session he presents a summary of the work of the preceding session.

### Article VIII. *Assistant Secretaries*

On the proposal of the secretary general, the Institute may appoint one or more assistant secretaries, to aid him in the performance of his duties or to represent him in his absence.

### Article IX. *Treasurer*

The treasurer is elected for three sessions. He is eligible for re-election.

He has in his charge the financial affairs of the Institute, under the control of the Executive Council. He presents a detailed report at each session.

Two members are designated at the first meeting as auditors, and present, during the session, a report on the result of their examination of the treasurer's accounts.

### Article X. *Reporters*

The Executive Council submits questions for examination and study to the affiliated national societies, or appoints reporters from among its members, or organizes committees for the preparatory study of questions that are to be submitted to the deliberations of the Institute.

In urgent cases, the secretary general himself prepares the reports.

### Article XI. *Sessions*

There shall be at least one session of the Institute every two years; but the Executive Council may, during this interval, call an extra session of the Institute.

At each session the Institute designates the place and the time of the following session. It may leave this designation to the Executive Council.

### Article XII. *Languages*

French, the language of the *Institut de droit international* and of the Peace Conferences, is likewise the language of the Institute.

Nevertheless the use of Spanish, Portuguese, and English, as national languages, is permitted as of right.

Every official document that is to be published is translated into the language or languages selected by the officers.

### Article XIII. *Publication of Proceedings*

After each session, the Institute publishes an account of its proceedings.

### Article XIV. *Dues and Funds*

The expenses of the Institute are covered:

1. By the dues of its members, as well as by an entrance fee.

The dues are, unless the by-laws provide to the contrary, an entrance fee of ten dollars and annual dues of five dollars. The dues are payable from and including the year of election. They entitle the member to all the publications of the Institute. An unjustifiable delay of more than three years in the payment of dues may be considered as equivalent to a resignation.

2. By foundations and other gifts.

It is proposed that a fund be gradually formed, the income from which shall be devoted to the expenses of the sessions, of the publications, of the secretariat, and of other routine matters.

### Article XV. *Amendments.*

The present constitution may be revised or amended, in whole or in part, at a regular session, on the request of a majority of the members present and voting.

# BY-LAWS OF THE AMERICAN INSTITUTE OF INTERNATIONAL LAW

## PART I

### *Members*

### Article I

The titular members of the Institute are elected by it from the list of names presented by the affiliated national society.

### Article II

Where no affiliated national society exists or where the existing society neglects to present candidates, the Institute provides for nominations or vacancies as it sees fit.

### Article III

Corresponding members are elected by the Institute on the proposal of the Executive Council, at the meeting devoted to the election of titular members.

## PART II

### *Preliminary Work between Sessions*

### Article IV

By article X of the Constitution the Executive Council presents the questions for study, either by laying them before the national societies, or by designating two reporters, or one reporter and a committee of study for each question.

In the former case, the subject, with or without a questionnaire, is submitted to each national society.

If two reporters are appointed, each of them prepares a memorandum, after which one of them or a third reporter designated by the Executive Council prepares a report on the basis of and with the assistance of the memoranda presented.

If a reporter and a committee of study are designated, the reporter must get into communication with the members of the

committee before the 31st of December of the year of his appointment, and submit his ideas to them and learn their views.

Every member, who signifies his desire to that effect, has the right to be a member of such of the committees of study as he shall indicate to the secretary general.

### Article V

The national societies and the reporters must transmit their studies or reports to the secretary general in ample time for their publication and distribution before the session at which they are to be discussed.

The secretary general does not provide for the printing or distribution of other reports or documents prepared by the reporters or by members of committees or of the Institute. Such works are published only in exceptional cases and by virtue of an express decision on the part of the Institute or the Executive Council.

## PART III

## *Sessions*

### Article VI

There may be no more than one session each year. The interval between two sessions must not exceed two years.

At each session the Institute designates the place and time of the next session. This designation may be left to the Executive Council (Constitution, Article XI). In this case, the secretary general informs the national societies affiliated with the Institute, at least four months in advance, of the place and date determined upon.

### Article VII

The program of the session is drawn up by the Executive Council, and the secretary general brings it to the attention of the national societies as soon as possible.

The program must be accompanied by the summary of the progress made on the preparatory work, as well as by all other information that may facilitate the labors of the members taking part in the session.

### Article VIII

Members who desire to propose new questions for study are invited to lay them before the Executive Council at the beginning of the session. This invitation must be extended by the president at the opening of the sessions.

### Article IX

The president, after consultation with the Executive Council and the reporters, determines the order in which the subjects should be treated; but the program is in all cases under the control of the Assembly itself.

## PART IV

*Meetings*

### Article X

The meetings are devoted to scientific work.

The titular members and the corresponding members take part in them. The former have the right to vote; the latter have the right merely to take part in the discussions.

The meetings are not public. The Executive Council may, however, permit the attendance of the local authorities and press, as well as of persons who request to be admitted.

### Article XI

Unless otherwise resolved by a special decision of the Executive Council, the president delivers an address immediately after the opening of the first meeting.

The secretary general presents a summary of the work of the last session and makes known the names of the assistant

secretaries or editors whom he has appointed to aid him in drawing up the minutes of the session.

The assistant secretaries or editors hold office only during the session.

### Article XII

The treasurer is then requested to present his accounts to the Institute, and two auditors are thereupon elected to examine the accounts of the treasurer. The auditors present their report in the course of the session (Constitution, Art. IX).

### Article XIII

Each meeting is opened by the reading of the minutes of the preceding meeting.

Separate minutes are drawn up for each meeting, even when there are more than one on the same day; but the minutes of the morning meeting are read only at the opening of the next day's meeting.

The members present approve or revise the minutes. Revision can be requested only in the matter of wording, of errors, or of omissions. A decision cannot be changed in the minutes.

The minutes of the last meeting of a session are approved by the president.

### Article XIV

If the Executive Council deems it advisable to consider a matter as urgent, it may propose the immediate discussion thereof, and, if the majority of the members present agree, the matter may be put to vote in the course of this session; otherwise the proposition is of right postponed until the following session.

### Article XV

Committees may be appointed during a meeting for the examination of certain questions. These committees may, in turn, appoint sub-committees.

### Article XVI

The propositions of the reporters and of the committees form the basis of the deliberations in the meetings.

The members of committees have the right to complete and develop their individual opinions.

### Article XVII

The discussion is then opened. It takes place in the languages indicated in Article XII of the constitution..

At the request of the members, the discussion may be summed up in French.

### Article XVIII

No one may speak without having been previously recognized by the president.

The latter notes the names of the members who request the floor and recognizes them in the order of their requests.

The reporters, however, when the question on which they have made a report is under discussion, are not subject to the rule of speaking in turn. The same is true of the president of the committee.

### Article XIX

The reading of an address is forbidden, unless specially authorized by the president.

### Article XX

If a speaker digresses too far from the subject under consideration, the president calls his attention to the fact and requests him to speak to the question.

### Article XXI

All propositions and all amendments are submitted, in writing, to the president.

### Article XXII

If a point of order is raised during a deliberation, the discussion of the main question is suspended until the assembly passes upon the point of order.

### Article XXIII

The closing of the discussion may be proposed. The discussion may not, however, be declared closed, unless a two-thirds majority of the assembly so votes.

If no one demands the floor or if it has been resolved to close the discussion, the president declares the discussion closed. Thereafter no one may be given the floor, except, in special cases, the reporter or the president of the committee.

### Article XXIV

Before proceeding to a vote, the president submits to the assembly the order in which the questions will be voted upon.

If there are objections to the order, the assembly passes upon them at once.

### Article XXV

Amendments to amendments are put to vote before amendments, and the latter before the main question. Proposals purely and simply to reject the question are not considered amendments.

Where there are more than two alternate main propositions, they are all put to vote, one after the other, and every member may vote for one of them. When a vote has thus been taken on all the propositions, if none of them has obtained a majority, the members decide, by another ballot, which of the two propositions receiving the least number of votes must be eliminated. The remaining propositions are then voted upon in the same manner until only one is left, upon which a definitive vote may be taken.

### Article XXVI

The adoption of an amendment to an amendment does not bind a member to vote for the amendment itself; neither does the adoption of an amendment obligate a member to vote in favor of the main proposition.

### Article XXVII

When a proposition is capable of being divided, any member may request a vote by division.

### Article XXVIII

When the proposition under consideration is drawn up in several articles, the proposition as a whole is first subjected to general discussion.

After such discussion and the vote on its articles, the proposition as a whole is put to vote. Such vote may be postponed until a subsequent meeting.

### Article XXIX

The voting is done by raising the hand.

No one is bound to take part in a vote. If some of the members present abstain, the question is decided by the majority of those voting.

In case of a tie, the proposition is considered defeated.

### Article XXX

The vote may be taken by roll-call, if five members so request. There is always occasion for a roll-call on a scientific proposition as a whole.

The minutes mention the names of the members voting for or against and the names of those who abstain.

## Article XXXI

The Institute may decide that a second deliberation should take place, either in the course of the session, or during the following session, or that its decisions be referred to a drafting committee to be designated by itself or by the Executive Council.

# OFFICERS AND MEMBERS OF THE AMERICAN INSTITUTE OF INTERNATIONAL LAW

## Officers

Elihu Root, *Honorary President*
James Brown Scott, *President*
Alejandro Alvarez, *Secretary General*
Luis Anderson, *Treasurer*

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## Executive Council

Elihu Root
James Brown Scott
Alejandro Alvarez
Luis Anderson
Antonio Sanchez de Bustamante
Joaquin D. Casasus

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## Permanent Committee for the Study of Questions Relating to Neutrality

*The Executive Council*

### Charter Members

*Argentine Republic:* Luis M. Drago
*Bolivia:* Alberto Gutierrez
*Brazil:* Ruy Barbosa
*Chile:* Alejandro Alvarez
*Colombia:* Antonio José Uribe
*Costa Rica:* Luis Anderson
*Cuba:* Antonio Sanchez de Bustamante
*Dominican Republic:* Andrés J. Montolio
*Ecuador:* Rafael Arizaga
*Guatemala:* Antonio Batres Jauregui
*Haiti:* J. N. Léger
*Honduras:* Alberto Membreño
*Mexico:* Joaquin D. Casasus

*Nicaragua:* Salvador Castrillo
*Panama:* Federico Boyd
*Paraguay:* Manuel Gondra
*Peru:* Ramon Ribeyro
*Salvador:* Rafael S. Lopez (deceased)
*United States of America:* James Brown Scott
*Uruguay:* Carlos M. de Pena
*Venezuela:* José Gil Fortoul

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Titular Members

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Eduardo Bidau
Carlos Octavio Bunge
Luis M. Drago
Joaquin V. Gonzalez
Eduardo Sarmiento Laspiur

*Bolivia*

Daniel Sanchez Bustamante
Alberto Gutierrez
Alberto Diez de Medina
Claudio Pinilla
Victor E. Sanjínes

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Lauro Müller
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Manuel Castro Quesada
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Solon Ménos

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Ricardo de J. Urrutia
Mariano Vásquez

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Manuel Calero
Joaquin D. Casasus
Victor Manuel Castillo
Pedro Lascurain

*Nicaragua*

Modesto Barrios
Alejandro Cesar
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Antolin Irala
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*Salvador*

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Alonso Reyes Guerra
Victor Jerez
Manuel I. Morales
Francisco Martinez Suarez

*United States of America*

Robert Bacon
Robert Lansing
Elihu Root
Leo S. Rowe
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F. Arroyo Parejo